

## HOUSE BILL NO. 92

INTRODUCED BY K. KELKER

BY REQUEST OF THE LAW AND JUSTICE INTERIM COMMITTEE

A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING COMPENSATION FOR PEOPLE WHO HAVE BEEN WRONGLY CONVICTED OF FELONY CRIMES AND EXONERATED; PROVIDING A PROCEDURE FOR FILING AND DETERMINING PETITIONS FOR COMPENSATION; PROVIDING FOR EXPUNGEMENT OF CONVICTION AND THE PAYMENT OF DAMAGES FOR SUCCESSFUL PETITIONS; PROVIDING OFFSETS FOR DAMAGES OBTAINED IN OTHER LITIGATION; CREATING A STATE SPECIAL REVENUE ACCOUNT; PROVIDING A TRANSFER; PROVIDING AN APPROPRIATION; AMENDING SECTION 46-23-1041, MCA; AND PROVIDING AN EFFECTIVE DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. **Section 1. Definitions.** As used in [sections 1 through ~~6~~7], the following definitions apply:

(1) "Claimant" means a person who:

(a) was convicted and subsequently imprisoned for one or more felony crimes that the person did not commit; ~~and~~

(b) is not currently serving a term of imprisonment; and

(c) meets the requirements of [section 2].

(2) "Imprisonment" means a term of confinement of at least 6 months in a correctional institution as defined in 45-2-101.

NEW SECTION. **Section 2. Contents of petition -- establishment of claim for compensation.** (1) A claimant may bring a civil action against the state in the district court in which the conviction originated TO SEEK THE RELIEF PROVIDED FOR IN [SECTION 5]. All claims of compensation are governed by the Montana Rules of Civil Procedure. The claim must be:

(a) accompanied by a statement of facts explaining the basis of the claim, INCLUDING A PROFFER ESTABLISHING ACTUAL INNOCENCE;

(b) written and verified by the claimant under penalty of perjury; and

(c) filed within a period of 3 years after:

(i) dismissal of the criminal charges against the claimant or a finding of not guilty on retrial; or

(ii) the grant of a pardon to the claimant IF THE PARDON IS BASED ON INNOCENCE FOR THE ACT THAT WAS THE BASIS OF THE CONVICTION.

(2) A claimant convicted, imprisoned, and released from custody before July 1, 2021, who intends to bring an action under [sections 1 through 6~~7~~] shall commence the action no later than July 1, 2024.

(3) All pleadings must be captioned as follows: "In the matter of the wrongful conviction of [name of claimant]."

(4) (a) A claimant who meets the criteria in subsection (1) and intends to bring an action under [sections 1 through 6~~7~~] must receive a transition assistance grant of \$5,000 from the department of corrections within 30 days of the claimant's release from imprisonment.

(b) The claimant shall verify by affidavit filed with the department of corrections that the claimant satisfies the requirements set forth in subsection (1), under penalty of perjury.

(c) If the claimant fails to file a claim within the time period described in this section, or if the claim is denied by the district court, the claimant shall reimburse the state in the amount of \$5,000 within 1 year following receipt of the grant money.

(5) AN INDIVIDUAL WHO HAS BEEN A PREVAILING PARTY IN A LAWSUIT IN STATE OR FEDERAL COURT THAT ALLEGED FACTS WHICH COULD ESTABLISH A COGNIZABLE CLAIM PURSUANT TO [SECTIONS 1 THROUGH 7] MAY NOT BE A CLAIMANT.

(6) AN INDIVIDUAL MAY NOT BE A CLAIMANT IF THE INDIVIDUAL LITIGATED A LAWSUIT IN STATE OR FEDERAL COURT OR SETTLED A CLAIM THAT ALLEGED FACTS WHICH COULD ESTABLISH A COGNIZABLE CLAIM PURSUANT TO [SECTIONS 1 THROUGH 7] BUT:

(A) DID NOT RECOVER DAMAGES AT TRIAL;

(B) RECOVERED DAMAGES IN AN AMOUNT LESS THAN THE AMOUNT TO WHICH THE PERSON WOULD BE ENTITLED UNDER [SECTION 5]; OR

1        (C) HAD THE CASE DISMISSED WITH PREJUDICE.

3        **NEW SECTION. Section 3. Commencement of proceedings -- burden of proof.** (1) A claimant is

4 entitled to a hearing in district court as expeditiously as possible after filing a claim for compensation.

5        (2) A claim filed pursuant to [sections 1 through 6 7] must be served on the department of justice. The  
6 department shall provide a defense for the state for claims filed under [sections 1 through 6 7].

7        (3) A claim filed under [sections 1 through 6 7] must be tried by a jury unless a jury trial is waived  
8 upon agreement of the parties.

9        (4) If a claimant dies prior to filing or during pendency of a claim under [sections 1 through 6 7], the  
10 person's estate may file or maintain a claim pursuant to [sections 1 through 6 7].

11        (5) The claimant must prove by ~~a preponderance of the~~ CLEAR AND CONVINCING A PREPONDERANCE OF  
12 THE evidence that:

13        (a) the claimant did not commit the crime or crimes for which the claimant was convicted, did not aid,  
14 abet, or act as an accomplice or accessory to a person who committed the acts that were the basis of the  
15 conviction, and did not commit a lesser offense necessarily included in the crime for which the claimant was  
16 convicted;

17        (b) the claimant did not commit perjury under 45-7-201, fabricate evidence, or by the claimant's own  
18 conduct cause or bring about the conviction. A confession or admission that is later found to be false or a guilty  
19 plea that is withdrawn does not constitute committing perjury, fabricating evidence, or causing or bringing about  
20 the conviction, and 45-7-201 does not apply.

21        (c) (i) the claimant's conviction was reversed or vacated and either the claimant was not retried and  
22 the charges were dismissed, or the claimant was retried and was found not guilty, and the basis for reversing or  
23 vacating the conviction was not legal error unrelated to factual innocence; or

24        (ii) the claimant was pardoned by the board of pardons and parole or the governor on the grounds that  
25 the claimant was innocent OF THE ACT FOR WHICH THE CLAIMANT WAS CONVICTED.

26        (6) The court, in exercising its discretion regarding the weight and admissibility of evidence submitted  
27 under this section, may in the interest of justice give due consideration to difficulties of proof caused by the  
28 passage of time, the death or unavailability of witnesses, the destruction of evidence, or other factors not

1 caused by claimants, the state, or those acting on their behalf.

2 (7) If the court finds that the claimant is entitled to judgment, the court shall enter a certificate of  
3 innocence finding that the claimant is innocent of all crimes for which the claimant was mistakenly convicted.  
4 The clerk of the court shall send a certified copy of the certificate of innocence and the judgment to the  
5 department of justice for payment pursuant to [sections 1 through 6 7].

6 (8) The decision of the district court may be appealed directly to the supreme court.

7 (9) IF, FOLLOWING THE ENTRY OF THE CERTIFICATE OF INNOCENCE AND THE RELATED JUDGMENT, EITHER THE  
8 SUPREME COURT AFFIRMS THE JUDGMENT OR THE STATE DOES NOT APPEAL THE JUDGMENT, THE CLAIMANT SHALL MOVE  
9 TO DISMISS WITH PREJUDICE ANY COMPLAINT PENDING IN STATE OR FEDERAL COURT RELATED TO THE SAME SUBJECT IN  
10 THE CLAIM FILED PURSUANT TO [SECTION 2].

11  
12 **NEW SECTION. Section 4. Expungement.** (1) Upon entry of a certificate of innocence, the court  
13 shall order the associated convictions and arrest records expunged and purged from all applicable systems,  
14 including both electronic and hard copy systems. The court shall enter the expungement order regardless of  
15 whether the claimant has prior criminal convictions in other cases that are not the subject of the claim for  
16 compensation.

17 (2) The order of expungement must state:

- 18 (a) the claimant's current full name;  
19 (b) the claimant's full name at the time of arrest and conviction, if different from the claimant's current  
20 name;  
21 (c) the claimant's sex, race, and date of birth;  
22 (d) the crime for which the claimant was arrested and convicted;  
23 (e) the date of the claimant's arrest and the date of the claimant's conviction; and  
24 (f) the identity of the arresting law enforcement authority and the identity of the district court that  
25 rendered the conviction.

26 (3) The order of expungement also must direct the department of justice to purge the conviction and  
27 arrest information from the central repository of the criminal justice information network and all applicable  
28 databases. The clerk of the court shall send a certified copy of the order to the department of justice for

1 immediate action, and the department shall carry out the order and notify the federal bureau of investigation,  
2 the department of corrections, and any other criminal justice agency that may have a record of the conviction  
3 and arrest. The department of justice shall provide confirmation of the action to the court.

4 (4) If a certificate of innocence and an order of expungement are entered, the claimant must be  
5 treated as not having been arrested or convicted of the crime or crimes to which the certificate of innocence  
6 applies.

7 (5) (a) Upon entry of a certificate of innocence:

8 (i) the court shall order the expungement and destruction of any associated biological samples from  
9 the claimant. The order must state the information required to be expunged and destroyed.

10 (ii) the court shall seal all district court records regarding the conviction. The district court records are  
11 only available upon a good cause finding by the court.

12 (iii) the clerk of the court shall send a certified copy of the order to the department of justice, which  
13 must carry out the order and provide confirmation of the action to the court.

14 (b) The department is not required to expunge and destroy any samples record associated with the  
15 claimant related to an offense other than the offense or offenses for which the court has entered a certificate of  
16 innocence.

17 (6) The decision to grant or deny a certificate of innocence does not have a res judicata effect on any  
18 other criminal proceedings involving the claimant.

19  
20 **NEW SECTION. Section 5. Damages.** (1) Damages, except as provided in subsection (3), awarded  
21 under this section are:

22 (a) \$60,000 for each year of imprisonment; and

23 (b) \$25,000 for each additional year served on parole or probation supervision or for each additional  
24 year the claimant was required to register as a sexual or violent offender, whichever is greater.

25 (2) Compensation awarded under [sections 1 through ~~6~~7] is not subject to the monetary limitation  
26 under 2-9-108.

27 (3) ~~An individual or political subdivision of the state is not responsible to pay damages, if any, and all~~  
28 ALL damages must be paid solely by the state OUT OF THE DEDUCTIBLE RESERVE FUND ESTABLISHED PURSUANT TO

~~2-9-202~~ OUT OF THE ACCOUNT PROVIDED FOR IN [SECTION 7].

(4) A claimant is not entitled to receive compensation for any period of imprisonment during which the claimant was concurrently serving a sentence for a conviction of another crime for which the claimant was lawfully convicted and incarcerated.

(5) (a) Except as provided in subsection (5)(b), the court shall order that the award be paid as a combination of an initial payment not to exceed \$100,000 or 25% of the award, whichever is greater, and the remainder as an annuity not to exceed \$80,000 a year.

(b) (i) On July 1 of each year, the award increases by an amount equal to the percentage increase, if any, for the preceding calendar year in the annual average consumer price index for urban wage earners, compiled by the bureau of labor statistics of the United States department of labor or its successor agency.

(ii) The amount for any partial year must be prorated in order to compensate only for the portion of the year when the claimant was incarcerated.

(c) The claimant shall designate a beneficiary or beneficiaries for the annuity by filing a beneficiary designation with the court.

(d) The court may order that the award be paid in one lump sum if the court finds that it is in the best interests of the claimant.

(6) (a) In addition to the damages awarded pursuant to subsection (1), a claimant:

(i) is entitled to receive costs, including but not limited to the actual cost of all expenses reasonably incurred in an action brought pursuant to [sections 1 through ~~6~~ 7], and reasonable attorney fees, not to exceed a total of \$25,000, ~~unless a greater amount is authorized by the court upon a finding of good cause;~~

~~(ii) may also be awarded other nonmonetary relief as sought in the complaint for compensation, including but not limited to counseling, housing assistance, and personal financial literacy assistance, as appropriate;~~

~~(iii)(ii)~~ is entitled to up to 2 years of tuition assistance at any unit or campus of the Montana university system, which must be used during the first 5 years after receiving a damages award; and

~~(iv)(iii)~~ is entitled to 1 year of state-funded medical insurance.

(b) All funds received by the claimant and the value of services provided, except any attorney fees retained by counsel, are exempt from state income taxes.

(7) The department of corrections shall provide ~~all reentry services to the claimant that are provided to other persons, including but not limited to financial assistance, housing assistance, mentoring, and counseling. These services must be provided~~ A HOUSING VOUCHER PURSUANT TO 46-23-1041 TO THE CLAIMANT while an action under [sections 1 through ~~6 7~~] is pending ~~and after any judgment is entered, provided the claimant prevails.~~

**NEW SECTION. Section 6. Offset provision.** (1) ~~If, EXCEPT FOR OTHER CLAIMS IN STATE COURT AS PROVIDED IN [SECTION 2(5)], IF~~ at the time of a damages award made pursuant to [section 5], the claimant has won a monetary award against the state or a political subdivision of the state in a civil action related to the same subject ~~IN THE CLAIM FILED PURSUANT TO [SECTION 2], or has entered into a settlement agreement with the state or a political subdivision of the state related to the same subject~~ AS THE CLAIM FILED PURSUANT TO [SECTION 2], the amount of the award in the action or the amount received in the settlement agreement, less any amounts paid to attorneys for actual costs and expenses in litigating the other civil action or obtaining the settlement agreement, must be deducted from the amount of money to which the claimant is entitled under [sections 1 through ~~6 7~~]. The court shall include in the judgment ~~entry an award to the state~~ AN ENTRY TO DEDUCT THIS AMOUNT FROM AN AWARD PURSUANT TO [SECTION 5] TO REFLECT THE NET DAMAGES OWED TO THE CLAIMANT of the amounts deducted.

(2) (a) ~~If EXCEPT FOR OTHER CLAIMS IN STATE COURT AS PROVIDED IN [SECTION 2(5)], IF subsection (1) does not apply and if,~~ after the time of a damages award made pursuant to [section 5], the claimant wins a monetary award against the state or a political subdivision of the state in a civil action related to the same subject, or enters into a settlement agreement with the state or a political subdivision of the state related to the same subject, the claimant shall reimburse the state for the amount of money paid under the damages award ~~PURSUANT TO [SECTION 5], less any amounts paid to attorneys for actual costs and expenses in litigating the other civil action or obtaining the settlement agreement.~~

(b) A reimbursement required under subsection (2)(a) may not exceed the amount of the monetary award the claimant wins for damages in the other civil action or the amount received in the settlement agreement.

**NEW SECTION. SECTION 7. EXONEREE COMPENSATION FUND.** (1) THERE IS AN ACCOUNT IN THE STATE

1 SPECIAL REVENUE FUND ESTABLISHED IN 17-2-102 KNOWN AS THE EXONEREE COMPENSATION FUND.

2 (2) MONEY IN THIS ACCOUNT MAY BE USED ONLY TO PAY COMPENSATION AWARDED UNDER [SECTIONS 1  
3 THROUGH 7].

4 (3) THE MONEY IN THE ACCOUNT MAY BE INVESTED PURSUANT TO TITLE 17, CHAPTER 6. THE INCOME AND  
5 EARNINGS ON THE ACCOUNT MUST BE DEPOSITED IN THE ACCOUNT.

6  
7 **SECTION 8. SECTION 46-23-1041, MCA, IS AMENDED TO READ:**

8 **"46-23-1041. Rental vouchers.** (1) If the department does not approve an offender's parole plan  
9 because the offender is unable to secure suitable living arrangements, the department may provide rental  
10 vouchers to the offender for a period not to exceed 3 months if the rental assistance will result in an approved  
11 parole plan.

12 (2) The department shall provide a rental voucher to a claimant if required by [section 5(7)].

13 (2)(3) The voucher provided pursuant to subsection (1) must be provided in conjunction with  
14 additional transition support that enables the offender to participate in programs and services, including but not  
15 limited to substance abuse treatment, mental health treatment, sex offender treatment, educational  
16 programming, or employment programming."

17  
18 **NEW SECTION. SECTION 9. TRANSFER OF FUNDS.** BY AUGUST 15, 2021, THE STATE TREASURER SHALL  
19 TRANSFER \$700,000 FROM THE GENERAL FUND TO THE ACCOUNT ESTABLISHED IN [SECTION 7].

20  
21 **NEW SECTION. SECTION 10. APPROPRIATION.** FOR THE BIENNIUM BEGINNING JULY 1, 2021, THERE IS  
22 APPROPRIATED \$700,000 TO THE DEPARTMENT OF ADMINISTRATION FROM THE ACCOUNT ESTABLISHED IN [SECTION 7]  
23 FOR THE PURPOSE OF PAYING COMPENSATION AWARDED UNDER [SECTIONS 1 THROUGH 7].

24  
25 **NEW SECTION. SECTION 11. Codification instruction.** [Sections 1 through 67] are intended to be  
26 codified as an integral part of Title 46, and the provisions of Title 46 apply to [sections 1 through 67].

27  
28 **NEW SECTION. SECTION 12. Severability.** If a part of [this act] is invalid, all valid parts that are



1 severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications,  
2 the part remains in effect in all valid applications that are severable from the invalid applications.

3  
4 NEW SECTION. SECTION 13. **Effective date.** [This act] is effective July 1, 2021.

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